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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/633,936

08/04/2003

Tristam W. Himmele

4947

7590

10/18/2004

Clifford Kraft  
320 Robin Hill Dr.  
Naperville, IL 60540

EXAMINER

STULTZ, JESSICA T

ART UNIT

PAPER NUMBER

2873

DATE MAILED: 10/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/633,936

Applicant(s)

HIMMELE, TRISTAM W.

Examiner

Jessica T Stultz

Art Unit

2873

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 8/30/04.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 11-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. <u>1004</u> |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)                              |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____   |

## DETAILED ACTION

### *Claim Objections*

Claim 13 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Specifically claim 13 states, "wherein said earphone is removable", however, this limitation already exists in claim 11, "at least one earphone removably attached". Therefore claim 13, does not further limit the invention of claim 11.

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 11 (and therefore dependent claims 12-18) is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Specifically regarding claim 11, applicant claims, "a radio attached to said telescopic device". There is no mention of the radio being attached to the telescope device in the specification, therefore introducing prohibited new subject matter into the claims. The drawings show the radio attached to the head support (Figures 1-4) however do not show the radio attached directly to the telescopic device. Applicant's attempted meaning is "a radio attached to

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said head support”, although the intended meaning is really not clear, this being the assumed meaning for purposes of examination.

Claims 12-18 are rejected because they inherit the indefiniteness of the claims from which they depend.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Truesdale.

Regarding claims 11 and 13, Truesdale discloses a sports viewing apparatus (Column 1, line 8-12, wherein the headgear is used to view sporting events, Figures 1-5) comprising in combination: a head support (Column 2, lines 33-42, wherein the head support is head gear “10”, Figures 1-5); at least one telescopic device coupled to the head support (Column 2, lines 32-53, wherein the telescopic device is binoculars “12” attached to headgear “10”, Figures 1-5); a radio attached to said head support (Column 3, lines 3-17 and Column 3, lines 41-50, wherein the radio includes receiver “70” and wherein the radio is connected to headset “14”, Figures 1-5); at least one earphone attached to said radio for listening to said radio (Column 3, lines 3-29, wherein the earphones “54” are attached to the headgear “10”, Figures 1-5), but does not specifically disclose that the head support is adjustable or that the earphones are removable. However the head support would inherently be adjustable and the earphones removable, this being reasonably based upon the head gear being disclosed as a cap or hat made of plastic,

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fabric, or leather in order to fit on a person's head (Column 2, lines 33-42) and since the earphones are attached to the headgear by a locking stop held placed into a slot and they are adjusted by moving the locking stop within the slot and therefore could easily be removed by completely removing the locking stop from the slot (Column 3, lines 3-29). Regardless it would have been obvious to one of ordinary skill in the art at the time the invention was made for the head support to be adjustable since it is well known in the art of caps and hats to be adjustable for the purpose of accommodating a broad range of head sizes of the users and for the earphones to be removed for the purpose of attaching new earphones, earmuffs or to provide the user the ability to listen to external sounds. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made for the head support of Truesdale to be adjustable since it is well known in the art of caps and hats to be adjustable for the purpose of accommodating a broad range of head sizes of the users and for the earphones to be removed for the purpose of attaching new earphones, earmuffs or to provide the user the ability to listen to external sounds.

Regarding claim 12, Truesdale further discloses that the radio is removable (Column 3, lines 3-50, wherein the radio "70" can be removed from the head gear and a cassette-tape deck, compact disk player, or a two-way radio, can be used in its place, Figures 1-5).

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Truesdale in view of Desimore.

Regarding claim 14, Truesdale discloses a sports viewing assembly as disclosed above, but does not specifically disclose that assembly include earmuffs. Desimore teaches of a helmet including earmuffs and an earphone for the purpose of receiving radio communication from a

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remote source (Column 2, lines 6-34; wherein the helmet "11" contains earmuffs "24" and speakers "32", Figures 1-5). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made for the sports viewing assembly of Truesdale to further include earmuffs since Desimore teaches of a helmet including earmuffs and an earphone for the purpose of receiving radio communication from a remote source.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Truesdale in view of Spector.

Regarding claim 15, Truesdale discloses a sports viewing assembly as disclosed above, but does not specifically disclose that the assembly include a microphone removably attached to the head support. Spector teaches of a helmet including a removable microphone for the purpose of allowing the wearer of the helmet to converse with other people (Column 4, lines 31-39, wherein the helmet "38" includes a microphone, Figure 4). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made for the sports viewing assembly of Truesdale to further include a microphone removably attached to the head support since Spector teaches of a helmet including a removable microphone for the purpose of allowing the wearer of the helmet to converse with other people.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Truesdale in view of Tocher.

Regarding claim 17, Truesdale discloses a sports viewing assembly as disclosed above, but does not specifically disclose that the apparatus includes a rangefinder. Tocher teaches of a telescopic device, specifically binoculars, including a rangefinder for the purpose of allowing measurement of distance from a device to targets of interest (Column 3, lines 8-44 and Column

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3, line 65-Column 4, line 22, wherein the rangefinder is "12" and the binoculars are "14", wherein the rangefinder is used to measure the distance between the viewing device and distant targets, Figure 1). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made for the viewing assembly of Truesdale to further include a rangefinder since Tocher teaches of a telescopic device, specifically binoculars, including a rangefinder for the purpose of allowing measurement of distance from a device to targets of interest.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Truesdale.

Regarding claim 18, Truesdale discloses a sports viewing assembly as disclosed above, but does not specifically disclose that the apparatus includes image stabilization. However, it is well known in the art of telescopic devices for the devices to include image stabilization for the purpose of providing clear images to the user. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made for the assembly of Truesdale to further include image stabilization since it is well known in the art of telescopic devices for the devices to include image stabilization for the purpose of providing clear images to the user.

#### *Examiner's Comments*

For applicant's information, an amendment to the specification was received on August 30, 2004 and has been filed in the application.

For applicant's information, the instant application was discussed with Georgia Epps, SPE AU 2873, and Jordan Schwartz, Primary Examiner AU 2873, on September 16, 2004 and it was determined that the allowability of claims 11-18 should be withdrawn in view of newly cited 112 rejections and art rejections shown above. In addition, the examined claims in this office

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action are the claims 11-18 filed on September 23, 2003 rather than the amended claims filed August 30, 2004, which revert the claims back to the original claims filed August 4, 2003.

Examiner spoke with attorney Clifford Kraft who agreed that the claims filed August 30, 2004 were in error and that the appropriate claims 11-18 should be the same as the claims filed September 23, 2003.

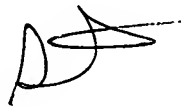
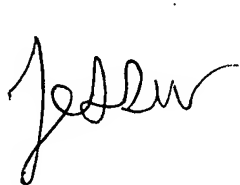
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica T Stultz whose telephone number is (571) 272-2339. The examiner can normally be reached on M-F 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Georgia Epps can be reached on 571-272-2328. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jessica Stultz  
Patent Examiner  
AU 2873  
October 4, 2004



**JORDAN SCHWARTZ**  
**PRIMARY EXAMINER**

